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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/749,106

12/27/2000

Cary Lee Bates

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IBM CORPORATION, INTELLECTUAL PROPERTY LAW  
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EXAMINER

VU, NGOC K

ART UNIT

PAPER NUMBER

2623

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/749,106	<b>Applicant(s)</b> BATES ET AL.	
	<b>Examiner</b> NGOC K. VU	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

1. Applicant's arguments with respect to claim 5 filed 4/15/2008 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bonomi et al. (US 6,769,127 B1) in view of Sartain et al. (US 5,914,712 A) and further in view of Pallakoff (US 6,269,343 B1).

Regarding claim 5, Bonomi teaches a method for determining a price of a program transmitted by a programming provider to subscribers, comprising: receiving (by 722 – figure 7A), via a network connection, a purchase order for a program from a subscriber (see col. 23, lines 40-45; figure 1B and 7A) belonging to a subscriber group defined by two or more subscribers (see customer list – figure 12A), wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider (see account information for Li Liu as shown in figure 12A) whereby the subscriber pays the programming provider in order to receive paid for programming (see figure 12A; col. 23, lines 36- 40 and 47-50; col. 2, lines 37-42; col. 21, line 67 to col. 22, line 1; col. 19, lines 14-18; col. 35, lines 1-22), and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program (the subscribers have the power to purchase or not purchase the program - see col. 9, lines 5-26 and figure 15F).

Bonomi teaches that the programming provider maintains a list of subscribers (see figures 8C-8D, 12A-12H) but does not explicitly teach that the list of subscribers includes a plurality of subscriber groups, wherein each group includes a subset of subscribers and wherein members of each subscriber group are determined prior to an offer to purchase the program. However, a group of subscribers can be easily defined as the group which video programming from a specific earth headend as disclosed by Sartain. For instance, one block on a street can form a subscriber group. Another example, a group of subscribers speaks a language different from another group. See col. 6, lines 49-57. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bonomi by defining subscribers into a plurality of subscriber groups in accordance with, for example, a block on a street or speaking a language, as disclosed by Sartain in order to help operator at the provider to easily update the list of subscribers and/or distribute programming to subscribers in an effective manner.

Sartain further discloses that when a subscriber of a group calls to request a video, the subscriber's telephone number is compared with a stored list of telephone numbers associated with subscribers who have previously not paid for video selections. If the subscriber's telephone number is matched with one of the stored list of telephone numbers, the request for the video is refused. Another example, when a subscriber of a group reaches an account limit, the request for a video is denied. See col. 5, lines 1-22. In other words, the provider monitors the subscriber's payment histories and/or account limit prior accepting the request or prior to an offer to purchase the video. That is, the provider must identify or determine a subscriber belong to a group each time the subscriber requests for a video. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bonimi by determining subscribers belong to a subscriber group prior to an offer to purchase the

Art Unit: 2623

video as disclosed by Sartain in order to ensure that only authorized subscriber or valid customer to access to the network.

Bonomi teaches determining a price for purchase order (e.g., \$6.95 for each purchase order of movie "America Beauty" – see figure 15F). Bonomi does not explicitly teach offering, to a first subscriber group of the subscriber groups, the program to purchase at a predetermined price; determining a first price (special/discount price) for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the first subscriber group; and determining a second price (regular price), higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group, wherein the threshold number of subscribers belonging to the first subscriber group is all the subscribers of the subscriber group. However, Pallakoff discloses determining a price based upon a threshold number of purchasers and/or number of purchasers of buying group. For instance, Pallakoff's system sends a message "We just need 5 more people to join the Buying Team in order to get the soccer ball for only \$10 each. Tell your friends!" to suggest the current purchasers to tell their friends about the offer in order to get more buyers to join the buying group (see col. 10, lines 43-56). In other words, Pallakoff teaches offering a predetermined price  $P$  (e.g.,  $P > \$10$ ) to purchase an item to a buying group, and determining a special/discount price ("first price")  $P_1$  based upon an actual number of purchasers of the buying group plus five (since need five more purchasers to join the buying group); and determining a regular price ("second price")  $P_2$ , higher than the special/discount price ( $P_2 > P_1$  since  $P_1$  is a discount price), based upon an actual number of purchasers of the buying group plus  $n$ , where  $n$  is a number of buyers invited to join to the buying group and  $0 \leq n \leq 4$ . That is, the number of all current purchasers of the buying group plus five corresponds to "the threshold number of subscribers belonging to the first subscriber group", and the number of all current purchasers of

Art Unit: 2623

the buying group corresponds to "the threshold number of subscribers belonging to the first subscriber group purchasing the program is all the subscriber of the first subscriber group". It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bonomi by offering a predetermined price to purchase the item to a buying group, determining a price based upon a threshold number of purchasers and/or number of purchasers of buying group and enticing people to join in the buying group for offering a discount price as taught by Pallokoff in order to benefit provider/seller to get higher number of purchasers in an effective manner.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGOC K. VU whose telephone number is (571)272-7306. The examiner can normally be reached on Monday-Friday.

Art Unit: 2623

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NGOC K. VU/  
Primary Examiner, Art Unit 2623